

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval of a Grant of)
Easement for an Underground)
Line to the Gas Company, LLC for)
the Transmission of Synthetic)
Natural Gas.)

DOCKET NO. 2007-0023

DECISION AND ORDER NO. 23661

Filed Sept. 14, 2007
At 12 o'clock P .M.

Karen Higashi
Chief Clerk of the Commission

RECEIVED
2007 SEP 17 A 8:26
DIV. OF CONSUMER UTILITY
REGULATION
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval of a Grant of)
Easement for an Underground)
Line to the Gas Company, LLC for)
the Transmission of Synthetic)
Natural Gas.)
_____)

Docket No. 2007-0023
Decision and Order No. 23661

DECISION AND ORDER

By this Decision and Order, the commission approves HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO") request for approval of a grant of easement to The Gas Company, LLC ("TGC") for an underground line for the transmission of synthetic natural gas ("SNG") on HECO's Moiliili Substation property, adjacent to the property line.

I.

Background

A.

HECO

HECO is a corporation organized and existing under the laws of the Kingdom of Hawaii, on or about October 13, 1891, now existing under and by virtue of the laws of the State of Hawaii. HECO's principal place of business is located at 900 Richards Street, Honolulu, Hawaii.

B.

Application

On January 22, 2007, HECO filed an application requesting commission approval to grant an easement to TGC for HECO's Moiliili 46 kilovolt ("kV") Substation property (the "Grant").¹ HECO makes its request pursuant to Hawaii Revised Statutes ("HRS") § 269-19.²

According to HECO, it is the owner, in fee simple, of that certain parcel of land identified as being Tax Map Key No. 2-7-009:042, and whose legal description is identified as "[a]ll of that certain parcel of land (being a portion of R.P.7789, L.C.Aw.7713, Apana 39 to V. Kamamalu), being a portion of Lot 3, Block "C", of the McKinley Part Tract, as shown on File Plan 253, situate on the Northwest side of Coolidge Street, at Kapaakea, City and County of Honolulu, State of Hawaii."³ This parcel of land is known as HECO's Moiliili 46 kilovolt substation ("Substation"). HECO states that it currently uses approximately three-fourths of the Substation area for its 46 kV equipment.

HECO asserts that in 1987, TGC installed a standard SNG service line, currently being used to serve two utility gas customers on Isenberg Street. According to HECO, the SNG line

¹Application and Certificate of Service, filed on January 22, 2007 ("Application"). On January 22, 2007, HECO served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") with a copy of the Application.

²The Grant was entered into by HECO and TGC on November 14, 2006.

³Application at 2.

was installed outside of the Substation perimeter fence without HECO's knowledge and consent. TGC has requested that HECO grant an easement to TGC over that portion of the Substation specifically located on Lot 3 and occupied by the gas line. HECO asserts that the Grant to TGC will not interfere with the use and operation of the Substation. In consideration of the Grant, TGC shall pay to HECO the nominal sum of ten dollars.⁴

C.

Consumer Advocate's Statement of Position

On March 16, 2007, the Consumer Advocate filed a statement of position stating that it does not object to commission approval of the Application ("Statement of Position"). The Consumer Advocate asserts that: (1) the Grant will not have an adverse effect on HECO's operations at the Substation; (2) the terms of the Grant appear to be reasonable in that the Grant requires TGC to use due care and diligence in maintaining the SNG line, the Grant contains indemnification requirements in which TGC will indemnify HECO, its tenants and all persons occupying HECO's land or the land immediately adjacent thereto from any and all claims and demands against HECO resulting from the SNG line, and pursuant to the Grant, TGC is required to maintain the easement area and restore the surface of the easement after removal of the SNG line at TGC's expense; and (3) the consideration of ten dollars appears to be reasonable.

⁴Application at 3.

II.

Discussion

Under HRS § 269-19, a public utility is required to obtain commission approval prior to, among other things, leasing or otherwise disposing of, or encumbering the whole or any part of its road, line, plant, system or other property necessary or useful in the performance of its duties to the public.

The commission recognizes that HECO's request is for an after-the-fact approval, i.e., the Grant is dated November 14, 2006.⁵ Accordingly, the commission concludes that it does not have the statutory authority under HRS Chapter 269 to grant retroactive approvals, as in the instant proceeding. See In re Globalcom, Inc., dba GCI Globalcom, Inc., Docket No. 04-0265, Decision and Order No. 21362 (September 24, 2004); and In re Sea Link of Hawaii, Inc., Docket No. 02-0212, Decision and Order No. 21085 (June 25, 2004). Accordingly, the commission concludes that HECO's request for approval, *nunc pro tunc*, of the Grant should be denied.

In the alternative, the commission finds that it is reasonable, and consistent with our statutory mandate, to approve the Grant on a prospective basis. In this instance, the commission finds that HECO's request is reasonable and that it is in the public interest to approve its Grant to TGC. TGC currently has two commercial customers being served from the SNG line. Without commission approval of the Grant, TGC will not be able to access the line to continue serving its customers.

⁵Id. at Exhibit 1.

The terms and conditions of the Agreement between HECO and TGC appear to be reasonable, and as the Consumer Advocate observes, are consistent with the terms and conditions of other similar agreements approved by the commission.⁶

Commission approval of the Grant is not expected to negatively impact the public interest nor is it expected to affect HECO's ratepayers. It is anticipated that TGC's use of the Substation would not adversely impact or interfere with HECO's operations.

Based on the above, the commission concludes that HECO's Grant of easement at the HECO Substation to TGC to allow TGC access to its SNG line should be approved, on a prospective basis.

III.

Orders

THE COMMISSION ORDERS:

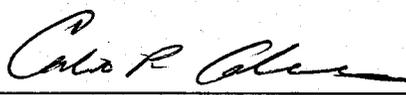
1. HECO's Application, filed on January 22, 2007, for commission approval of a grant of easement between HECO and TGC for an underground line for the transmission of synthetic natural gas at HECO's Substation, is approved effective as of the date of this Decision and Order.

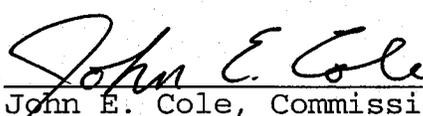
2. This docket is closed, unless ordered otherwise by the commission.

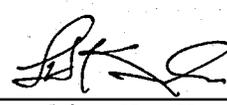
⁶See the Consumer Advocate's Statement of Position at 6 wherein it notes that in Docket Nos. 05-0228 and 99-0137, Hawaii Electric Light Company, Inc. assessed a consideration of one dollar for the grant of an easement.

DONE at Honolulu, Hawaii SEP 14 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

2007-0012.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23661 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM A. BONNET
VICE PRESIDENT-GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

DEAN MATSUURA
DIRECTOR, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001



Karen Higashi

DATED: SEP 14 2007